

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

OWNERS ASSOCIATION OF LONGFELLOW
RUN CONDOMINIUM, a Washington non-profit
corporation,

Plaintiff.

ALLSTATE INSURANCE COMPANY, an Illinois Corporation; DOE INSURANCE COMPANIES 1-10,

Defendants.

NO.

COMPLAINT FOR DECLARATORY
RELIEF, BREACH OF CONTRACT, BAD
FAITH, IFCA VIOLATIONS CONSUMER
PROTECTION ACT VIOLATIONS AND
DAMAGES

JURY DEMAND

Plaintiff Owners Association of Longfellow Run Condominium (“Association”) alleges as follows:

I. INTRODUCTION

1.1 This is an action for declaratory judgment and money damages seeking:

(A) A declaration of the rights, duties and liabilities of the parties with respect to certain controverted issues under insurance policies issued to the Association by Defendant Allstate Insurance Company (“Allstate”). The Association is seeking a ruling that Allstate’s policies provide coverage for the hidden damage at the Longfellow Run Condominium complex and that Allstate is liable for money damages for the cost of investigating and repairing hidden damage at the Longfellow Run Condominium complex.

COMPLAINT FOR DECLARATORY RELIEF,
BREACH OF CONTRACT, CPA VIOLATIONS,
IFCA VIOLATIONS, AND DAMAGES - 1

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(B) Damages for breach of contract, bad faith, violations of the Consumer Protection Act (“CPA”) and violations of the Insurance Fair Conduct Act (“IFCA”).

(C) Attorneys' fees (including expert witness fees) and costs.

(D) Any other relief the Court deems just and equitable.

II. PARTIES AND INSURANCE CONTRACTS

2.1 The Association. The Association is a nonprofit corporation organized under the laws of the state of Washington with its principal place of business located in Seattle, Washington. The Association has the duty to maintain the common elements and any limited common elements of the Longfellow Run Condominium complex located at 8430 25th Ave SW Seattle, WA 98106. The Association consists of 26 buildings, 104 units.

2.2 Allstate. Allstate is an Illinois domiciled insurer with its principal place of business in Northbrook, Illinois. Allstate sold property insurance policies to the Association including Policy No. 050089163 in effect from 1985 to 1989. The Allstate policies identify the Longfellow Run condominium complex as covered property.

2.3 Doe Insurance Companies 1-10. Doe Insurance Companies 1-10 are currently unidentified entities who, on information and belief, sold insurance policies to the Association that identify the Longfellow Run Condominium complex as covered property.

2.4 Longfellow Run Insurers. Allstate and Doe Insurance Companies 1-10 shall be collectively referred to as the "Longfellow Run Insurers."

2.5 Longfellow Run Policies. The policies issued to the Association by the Longfellow Run Insurers shall be collectively referred to as the “Longfellow Run Policies.”

III. JURISDICTION AND VENUE

3.1 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (diversity jurisdiction) as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000. The Association’s expert has determined that it will cost well over \$75,000 to repair covered hidden damage at Longfellow Run.

1 3.2 Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) as the Longfellow Run
 2 Insurers marketed and sold insurance to the Association in King County; a substantial part of the
 3 events giving rise to the claim, including the breach of contract, occurred in King County; and the
 4 insured condominium building is located in King County.

5 **IV. FACTS**

6 4.1 Incorporation by Reference. The Association re-alleges the allegations of paragraphs 1.1
 7 through 3.2, above, as if fully set forth herein.

8 4.2 Tender to Allstate. The Association submitted a claim to Allstate in May, 2018 for hidden
 9 damage discovered by Soltner Group Architects (“SGA”) as part of a limited intrusive investigation
 10 conducted by SGA in February, 2018. As part of its tender of claim, the Association asked Allstate to
 11 investigate for other hidden damage that may exist at Longfellow Run. The Association, Allstate, and the
 12 Association’s historical insurers conducted a joint intrusive investigation in October, 2018 which
 13 revealed system wide damage. Soltner’s February, 2019 report following the joint intrusive investigation
 14 detailed that out of 11 openings made during the investigation, 8 (73%) had damaged framing. It was
 15 SGA’s opinion that from the results of the joint intrusive investigation that:

16 Water intrusion in the form of rainwater events, including wind driven rain (WDR), is the
 17 primary cause of the hidden water damage identified at Longfellow Run Condominium.
 18 The following secondary causal factors also contributed to the presence of hidden water
 19 damage. 1. Lack of adequate flashing; 2. Lack of sealant joints at building penetrations
 20 and openings; 3. Improper weather resistive barrier installation. The hidden damage at
 Longfellow Run Condominium has occurred incrementally and progressively each year
 from 1979 to the present. It is expected that similar levels of damage would be found at
 other locations not investigated

21 4.3 On April 18, 2019, Allstate unreasonably denied the Association’s claim. Allstate’s grounds for
 22 denying coverage ignored relevant Washington case law that has interpreted the same policy provisions
 23 in Allstate’s policy in favor of coverage.

24 4.4 IFCA Letter to Allstate. On May 15, 2019, the Association sent Allstate a notice pursuant to
 25 the Insurance Fair Conduct Act (“IFCA”) asking Allstate to cure its unreasonable denial of the
 26 Association’s claim. The Association requested that: (1) Allstate acknowledge among other things
 27

1 that Allstate's policy covers damage to exterior sheathing and framing at Longfellow Run caused by rain
2 and weather conditions; (2) water damage and incremental damage occurred during each Allstate policy
3 period; and (3) that the Association provided timely notice of the loss to Allstate. The Association
4 made clear to Allstate that it was especially improper that its adjuster Jaclyn Groff asked Allstate's
5 expert Ed Huston to change his opinions regarding timing of damage at Longfellow Run in order to
6 support Allstate's denial of the Association's claim. Allstate responded to the Association's IFCA
7 letter on May 30, 2019 by doubling down on its unreasonable positions and refusing to correct its
8 unreasonable denial letter and accept coverage.

**V. FIRST CLAIM AGAINST LONGFELLOW RUN INSURERS FOR
DECLARATORY RELIEF THAT THE LONGFELLOW RUN POLICIES PROVIDE
COVERAGE**

11 | 5.1 Incorporation by Reference. The Association re-alleges and incorporates by reference the
12 | allegations of paragraphs 1.1 through 4.4, above, as if fully set forth herein.

13 | 5.2 Declaratory Relief. The Association seeks declaratory relief from the Court in the form of
14 | determinations regarding the following disputed issues:

15 a. The Longfellow Run Policies cover the hidden damage at Longfellow Run including
16 but not limited building paper, exterior sheathing, and framing at Longfellow Run.

17 b. No exclusions, conditions, or limitations bar coverage under the Longfellow Run
18 Policies.

19 c. The loss or damage to the Longfellow Run complex was incremental and
20 progressive. New damage commenced during each year of the Longfellow Run Policies.

21 d. As a result, the Longfellow Run Policies cover the cost of investigating and
22 repairing the hidden damage at the Longfellow Run Condominium complex.

VI. SECOND CLAIM AGAINST ALLSTATE FOR BREACH OF CONTRACT

24 6.1 Incorporation by Reference. The Association re-alleges and incorporates by reference the
25 allegations of paragraphs 1.1 through 5.2, above, as if fully set forth herein.

1 6.2 Allstate has contractual duties under the terms of its policy and/or policies to pay the cost
2 of investigating and repairing the covered damage to the Longfellow Run Condominium complex.

3 6.3 Allstate breached its contractual duties by denying coverage on April 18, 2019 and failing
4 to pay the cost to repair the covered damage to the Longfellow Run Condominium Complex.

5 6.4 As a direct and proximate result of Allstate's breach of its contractual duties, the
6 Association has been damaged in an amount to be proven at trial.

7 6.5 Additional Damages. As a direct and proximate result of Allstate's breach of its contractual
8 duties, the Association has been forced to incur attorneys' fees, expert costs, investigation costs
9 and other expenses in order to prosecute this action, the sole purpose of which is to obtain the
10 benefits of the Association's insurance contracts.

11 **VII. THIRD CLAIM AGAINST ALLSTATE FOR INSURANCE BAD FAITH**

12 7.1 Incorporation by Reference. The Association re-alleges and incorporates by reference the
13 allegations of paragraphs 1.1 through 6.5, above, as if fully set forth herein.

14 7.2 An insurer has a duty to act in good faith. This duty requires an insurer to deal fairly with its
15 insured. The insurer must give equal consideration to its insured's interests and its own interests,
16 and must not engage in any action that demonstrates a greater concern for its own financial interests
17 than its insured's financial risk. An insurer who does not deal fairly with its insured, or who does not
18 give equal consideration to its insured's interests, fails to act in good faith.

19 7.3 The duty of good faith required Allstate to conduct a reasonable investigation before
20 refusing to pay the claim submitted by the Association. Allstate must also have had a reasonable
21 justification before refusing to pay the Association's claim. An insurer who refuses to pay a claim,
22 without conducting a reasonable investigation or without having a reasonable justification, fails to
23 act in good faith.

24 7.4 Allstate failed to act in good faith because, among other things, Allstate's adjuster
25 instructed its expert Ed Huston to change his opinion regarding the timing of damage in order to
26 support Allstate's denial of the Association's claim; Allstate failed to acknowledge that weather
27

1 conditions such as rain or wind-driven rain were one of the causes of the hidden damage at
 2 Longfellow Run; and Allstate failed to acknowledge that the Court in *Greenlake Condo. Ass'n v.*
 3 *Allstate Ins. Co.*, 2015 U.S. Dist. LEXIS 184729, *2 examined the same Allstate customizer policy
 4 at issue here and interpreted the policy in favor of coverage including to provide coverage for
 5 hidden damage from wind-driven rain. Instead, of acknowledging coverage, Allstate unreasonably
 6 denied coverage for any and all hidden damage at the Longfellow Run complex. Allstate's self-
 7 serving denial did not comport with Washington law or the plain meaning of its own policy
 8 language, and put Allstate's financial interests ahead of the Association's to the Association's
 9 detriment.

10 7.5 In addition, a violation, if any, of one or more of the Washington claim handling standards
 11 set forth below is a breach of the duty of good faith, an unfair method of competition, an unfair or
 12 deceptive act or practice in the business of insurance, and a breach of the insurance contract.

13 Allstate's conduct violated Washington claim handling standards:

- 14 ▪ Which require Allstate to fully disclose all pertinent coverages.
- 15 ▪ Which prohibit misrepresentations regarding relevant facts (e.g. the cause of damages) or
 16 coverage.
- 17 ▪ Which prohibit the practice of refusing to pay claims without conducting a reasonable
 18 investigation.
- 19 ▪ Which require Allstate to provide a reasonable explanation of the relevant facts, law and
 20 policy language and how its policy language supported a denial of the Association's claim.
- 21 ▪ Which require Allstate to adopt and implement reasonable standards for the prompt
 22 investigation of claims.
- 23 ▪ Which requires Allstate to not put its own financial interest ahead of the financial interests
 24 of its insured.

25 7.6 Allstate's actions and omissions, including but not limited to its denial of coverage, were
 26 unreasonable, unfounded, and frivolous under the circumstances and constitute a breach of
 27

1 Allstate's duty of good faith. As a direct and proximate result of Allstate's breach of its duty of
2 good faith, the Association has been damaged in an amount to be proven at trial.

3

4 **VIII. FOURTH CLAIM AGAINST ALLSTATE FOR VIOLATIONS OF THE CONSUMER
PROTECTION ACT**

5 8.1 The Association re-alleges and incorporates by reference paragraphs 1.1 through 7.6,
6 above, as if fully set forth herein.

7 8.2 Violations of WAC claims handling standards are per se CPA violations. On information
8 and belief, the conduct of Allstate was deceptive, impacted the public, and had the capacity to
9 deceive. The Association is a consumer. As a direct and proximate result of Allstate's violations,
10 the Association has been damaged in an amount to be proven at trial. The Association is entitled to
11 damages, CPA penalties of up to \$25,000 per violation, and attorneys' fees under the CPA.

12

13 **IX. FIFTH CLAIM AGAINST ALLSTATE FOR IFCA VIOLATIONS**

14 9.1 Incorporation by Reference. The Association re-alleges and incorporates by reference
15 paragraphs 1.1 through 8.2, above, as if fully set forth herein.

16 9.2 The Association is a first party claimant asserting a right to payment as a covered person
17 under an insurance policy or insurance contract arising out of the occurrence of a contingency or
18 loss covered by such a policy. Pursuant to IFCA, the Association provided written notice to Allstate
19 of its IFCA cause of action and explained in detail why Allstate's coverage denial was
20 unreasonable. Allstate failed to resolve the basis for the Association's IFCA claim within twenty
21 (20) days of the Association's notice, and instead communicated to the Association that it would
22 not cure its IFCA violations.

23 9.3 The Association has been injured by Allstate's failure to cure the basis for the Association's
24 IFCA claim. The Association is entitled to attorneys' fees and a discretionary award of enhanced
25 damages that "increases the total award of damages to an amount not to exceed three times the
26 actual damage".

X. PRAYER FOR RELIEF

WHEREFORE, the Association prays for judgment as follows:

10.1 Declaratory Judgment Regarding Coverage. A declaratory judgment that the Longfellow Run Policies provide coverage as described herein.

10.2 Money Damages. For money damages against the Longfellow Run Insurers in an amount to be proven at trial.

10.3 Attorneys' Fees and Costs of Suit. For reasonable attorneys' fees (including expert fees).

See *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), and RCW 48.30.015.

10.4 CPA Penalties. For CPA penalties against Allstate of up to \$25,000 per violation.

10.5 Enhanced IFCA Damages. For a discretionary award of enhanced IFCA damages that “increase the total award of damages to an amount not to exceed three times the actual damage

10.6 **Other Relief.** For such other and further relief as the Court deems just and equitable.

XI. DEMAND FOR JURY TRIAL

11.1 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Association demands trial by jury in this action of all issues so triable.

DATED this 5th day of June, 2019

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